

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

AMYRIS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-11131 (TMH)

(Jointly Administered)

Lavvan, Inc.,

Appellant,

v.

Amyris, Inc. et al.,

Appellees.

Civil Action No. 23-cv-01239-MN

Bankruptcy BAP No. 23-00062

**APPELLANT’S (I) STATEMENT OF THE ISSUES
TO BE PRESENTED ON APPEAL, AND (II) DESIGNATION
OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Lavvan, Inc. (the “**Appellant**”) hereby makes this (i) statement of the issues to be presented on appeal, and (ii) designation of the items to be included in the record on appeal, with respect to the *Notice of Appeal* dated October 30, 2023, under which the Appellant appealed from (1) the bench ruling dated October 11, 2023 [D.I. 543] (the “**Bench Ruling**”), and (2) the *Final Order (I) Authorizing the Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* entered on October 16, 2023 [D.I. 558] (the “**Order**”).

¹ A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.stretto.com/amyris>. The location of Debtor Amyris Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 5885 Hollis Street, Suite 100, Emeryville, CA 94608.

I. Statement of the Issues to be Presented on Appeal.

The Appellant appeals the Bench Ruling in its entirety and all portions of the Order affecting or pertaining to Lavvan, including without limitation as to the following issues:

- (1) When a subordination agreement contains no provision even mentioning DIP financing, let alone priming of liens through DIP financing, does it nevertheless constitute consent to priming DIP financing just because it contains a provision related to seeking adequate protection?
- (2) Does a subordination agreement's provision that a creditor may not "seek" adequate protection alleviate the Bankruptcy Code's requirement that a Bankruptcy Court "may authorize the obtaining of credit or the incurring of debt secured by a senior ... lien ... only if... there is adequate protection"?
- (3) Did the Bankruptcy Court err in granting a final DIP order which primes Lavvan when the DIP motion and statements on the record at the first day hearing expressly stated that there was no nonconsensual priming and Lavvan appeared at the hearing specifically to confirm that it was not being primed?
- (4) Did the Bankruptcy Court err in granting a final DIP order with a waiver of marshalling provision when Lavvan objected to this provision and the Bankruptcy Court did not mention the issue or explain why the provision was appropriate in its Bench Ruling?
- (5) When Lavvan argued that the only loan to which it was subordinated had been materially amended (in amount, maturity date, convertibility, collateral package, fees and other ways) multiple times such that it no longer was the same loan for purposes of the subordination agreement, did the Bankruptcy Court err in limiting the discovery Lavvan could take on this issue and nevertheless basing its ruling on the continued existence of the loan, and thus the continued application of the subordination agreement?
- (6) Did the Bankruptcy Court err in finding that "the Foris LSA included express language allowing for a new loan commitment without a limit and that the "subordination agreement contains explicit provisions allowing for the addition of debt under the Foris LSA and the right to amend its terms."?

II. Designation of Record on Appeal.²

The Appellant submits the following designation of items to be included in the record on appeal (including any exhibit, annex, or addendum thereto):

<u>Docket No. and Case No.</u>	<u>Date Filed</u>	<u>Description</u>
[D.I. 17, Case No. 23-11131]	8/10/2023	Declaration of Steven Fleming in Support of (A) Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief, and (B) Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Continue Operating Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Granting Related Relief
[D.I. 18, Case No. 23-11131]	8/10/2023	Declaration of Han Kieftenbeld in Support of The Debtors' Chapter 11 Petitions and First Day Relief
[D.I. 19, Case No. 23-11131]	8/10/2023	Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief

² All items designated herein by the Appellant include all exhibits, schedules, attachments, and other documents included within each docket entry for such item.

<u>Docket No. and Case No.</u>	<u>Date Filed</u>	<u>Description</u>
[D.I. 20, Case No. 23-11131]	8/10/2023	Declaration of Lorie Beers in Support of Motion of Debtors for Interim and Final Orders (I) Authorizing the Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 113, Case No. 23-11131]	8/11/2023	Transcript regarding Hearing Held 8.11.2023 RE: First Day Motions
[D.I. 54, Case No. 23-11131]	8/11/2023	Interim Order (I) Authorizing the Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 75, Case No. 23-11131]	8/14/2023	Notice of Hearing on Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing And (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 98, Case No. 23-11131]	8/17/2023	Debtors' First Day Hearing Presentation
[D.I. 171, Case No. 23-11131]	8/31/2023	[SEALED] Limited Objection of Lavvan, Inc. to Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief

<u>Docket No. and Case No.</u>	<u>Date Filed</u>	<u>Description</u>
[D.I. 172, Case No. 23-11131]	8/31/2023	[REDACTED] Limited Objection of Lavvan, Inc. to Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief)
[D.I. 174, Case No. 23-11131]	8/31/2023	[SEALED] Motion to Approve Lavvan, Inc.'s Motion for Limited Modification of Automatic Stay
[D.I. 175, Case No. 23-11131]	8/31/2023	[REDACTED] Motion to Approve Lavvan, Inc.'s Motion for Limited Modification of Automatic Stay
[D.I. 176, Case No. 23-11131]	8/31/2023	Motion for Entry of An Order Authorizing Lavvan, Inc. to File Under Seal Its (I) Limited DIP Objection to Dip Motion And (II) Motion For Modification Of Automatic Stay
[D.I. 211, Case No. 23-11131]	9/8/2023	Supplemental Objection of Lavvan, Inc. to Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 213, Case No. 23-11131]	9/8/2023	Statement of the Debtors with Respect to Lavvan, Inc.'s Motion for Limited Modification of Automatic Stay to Permit Issuance of an Arbitration Award
[D.I. 230, Case No. 23-11131]	9/11/2023	Order Granting Limited Modification of Automatic Stay to Permit Issuance of an Arbitration Award
[D.I. 231, Case No. 23-11131]	9/11/2023	Order Authorizing Lavvan, Inc. to File Under Seal its (I) Limited DIP Objection to DIP Motion and (II) Motion for Modification of Automatic Stay

<u>Docket No. and Case No.</u>	<u>Date Filed</u>	<u>Description</u>
[D.I. 235, Case No. 23-11131]	9/11/2023	Reply Of Euagore, LLC and the Foris Prepetition Secured Lenders to Objection of Lavvan, Inc., and Joinder to Reply of the Debtors in Support of Final Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief
[D.I. 236, Case No. 23-11131]	9/11/2023	[SEALED] Reply of the Debtors in Support of Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief
[D.I. 237, Case No. 23-11131]	9/11/2023	Debtors' Motion for Entry of an Order Authorizing Debtors to File Under Seal Certain Information Related to Reply of the Debtors in Support of Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief
[D.I. 238, Case No. 23-11131]	9/11/2023	[REDACTED] Reply of the Debtors in Support of Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing And (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief
[D.I. 248, Case No. 23-11131]	9/12/2023	The Foris Lenders' Witness and Exhibit List for Hearing Scheduled September 14, 2023 At 2:00 P.M. (ET)
[D.I. 272, Case No. 23-11131]	9/14/2023	Lavvan, Inc.'s Witness and Exhibit List for Hearing Scheduled for September 14, 2023 at 2:00 P.M. (ET)

<u>Docket No. and Case No.</u>	<u>Date Filed</u>	<u>Description</u>
[D.I. 273, Case No. 23-11131]	9/14/2023	Amended Declaration of Steven Fleming in Support of Reply of the Debtors in Support of Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing And (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying The Automatic Stay, And (IV) Granting Related Relief
[D.I. 275, Case No. 23-11131]	9/14/2023	Amended Notice of Agenda of Matters Scheduled for Hearing on September 14, 2023 At 2:00 P.M. (Eastern Time)
[D.I. 298, Case No. 23-11131]	9/15/2023	Notice of Zoom Status Conference on Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 308, Case No. 23-11131]	9/18/2023	Transcript regarding Hearing Held 9.14.2023 RE: DIP Motion.
[D.I. 309, Case No. 23-11131]	9/18/2023	Transcript regarding Status Conference Held 9.15.2023 RE: DIP Motion.
[D.I. 315, Case No. 23-11131]	9/18/2023	Certification of Counsel Regarding Motion of The Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief

<u>Docket No. and Case No.</u>	<u>Date Filed</u>	<u>Description</u>
[D.I. 318, Case No. 23-11131]	9/19/2023	Certification of Counsel Regarding Debtors' Proposed Scheduling Order with Respect to Continued Hearing on the Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 320, Case No. 23-11131]	9/19/2023	Certification of Counsel Regarding Proposed Order Approving Briefing Schedule
[D.I. 322, Case No. 23-11131]	9/19/2023	Second Interim Order (I) Authorizing the Debtors (A) to Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 323, Case No. 23-11131]	9/19/2023	Scheduling Order with Respect to Continued Hearing on the Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 367, Case No. 23-11131]	9/26/2023	Notice of Deposition of John Doerr
[D.I. 387, Case No. 23-11131]	9/27/2023	Notice of Deposition of Han Kieftenbeld
[D.I. 388, Case No. 23-11131]	9/27/2023	Notice of Deposition of Theodore Martens
[D.I. 396, Case No. 23-11131]	9/28/2023	Debtors' Notice of Deposition of Michael Gaul

<u>Docket No. and Case No.</u>	<u>Date Filed</u>	<u>Description</u>
[D.I. 402, Case No. 23-11131]	9/29/2023	Opening Brief of Lavvan, Inc. in Opposition to Motion of The Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing And (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 403, Case No. 23-11131]	9/29/2023	Supplemental Brief of Euagore, LLC and the Foris Prepetition Secured Lenders with Respect to Continued Hearing on the Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief
[D.I. 404, Case No. 23-11131]	9/29/2023	Opening Supplemental Brief of the Debtors in Support of Entry of Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief
[D.I. 407, Case No. 23-11131]	10/2/2023	The Foris Lenders' Witness and Exhibit List for Hearing Scheduled October 4, 2023 at 10:00 A.M. (ET)
[D.I. 408, Case No. 23-11131]	10/2/2023	Debtors' Witness and Exhibit List For Hearing on October 4, 2023 At 10:00 A.M. (Et)
[D.I. 415, Case No. 23-11131]	10/2/2023	Lavvan, Inc.'s Witness and Exhibit List for Hearing Scheduled for October 4, 2023 at 10:00 A.M. (ET)
[D.I. 417, Case No. 23-11131]	10/2/2023	Motion to Quash Lavvan Inc.'s Notice of Deposition of John Doerr
[D.I. 418, Case No. 23-11131]	10/2/2023	Debtors' Joinder to Motion to Quash Lavvan Inc.'s Notice of Deposition of John Doerr
[D.I. 420, Case No. 23-11131]	10/2/2023	Notice of Hearing on Motion to Quash Lavvan Inc.'s Notice of Deposition of John Doerr

<u>Docket No. and Case No.</u>	<u>Date Filed</u>	<u>Description</u>
[D.I. 427, Case No. 23-11131]	10/3/2023	Lavvan, Inc.'s Opposition to Motion to Quash Notice of Deposition of John Doerr, and Cross-Motion to Exclude Testimony of Oksana Wright
[D.I. 429, Case No. 23-11131]	10/3/2023	Order Granting Motion to Quash Lavvan Inc.'s Notice of Deposition of John Doerr
[D.I. 433, Case No. 23-11131]	10/3/2023	Joint Reply of The Debtors, Euagore, LLC, And the Foris Prepetition Secured Lenders to Opening Brief of Lavvan, Inc. in Opposition to Motion of The Debtors for Interim And Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing And (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 435, Case No. 23-11131]	10/3/2023	Reply Brief of Lavvan, Inc. in Opposition to Motion of the Debtors for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 444, Case No. 23-11131]	10/4/2023	Debtors' (1) Further Opposition to Lavvan, Inc.'s Request for Imposition of an Adverse Inference and (2) Opposition to Lavvan, Inc.'s Cross-Motion to Exclude Testimony of Oksana Wright
[D.I. 447, Case No. 23-11131]	10/4/2023	Transcript regarding Hearing Held 10/03/23 RE: Motion to Quash
N/A	10/4/2023	All Exhibits Admitted Into Evidence at the October 4, 2023 Hearing
[D.I. 491, Case No. 23-11131]	10/6/2023	Transcript regarding Hearing Held 10/04/23 RE: Omnibus

<u>Docket No. and Case No.</u>	<u>Date Filed</u>	<u>Description</u>
[D.I. 497, Case No. 23-11131]	10/10/2023	Notice of Hearing Regarding Ruling on Motion of The Debtors For Interim And Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing And (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 543, Case No. 23-11131]	10/16/2023	Transcript regarding Hearing Held 10/11/23 RE: Omnibus
[D.I. 558, Case No. 23-11131]	10/16/2023	Final Order (I) Authorizing the Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief
[D.I. 620, Case No. 23-11131]	10/25/2023	Challenge-Period Adversary Complaint to Challenge Enforceability, Priority, and Extent of Security Interests and Liens, and for Other Relief
[D.I. 634, Case No. 23-11131]	10/30/2023	Notice of Appeal

CERTIFICATION PURSUANT TO BANKRUPTCY RULE 8009(b)

In an appeal from a bankruptcy court ruling, Rule 8009(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) requires an appellant to either: (i) order from the court reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal and file a copy of the order with the bankruptcy clerk; or (ii) file a certificate with the bankruptcy clerk stating that the appellants are not ordering a transcript.

Pursuant to Bankruptcy Rule 8009(b), the Appellant respectfully certifies that it is not ordering a transcript not already included in the record on appeal with respect to the appeal docketed in the United States District Court for the District of Delaware, Civ. No. 23-cv-01239-UNA because the relevant transcripts are all already part of the designated record.

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Dated: November 13, 2023

Respectfully submitted,

/s/ Russell C. Silberglied

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